

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHAEL A. COX,  
Attorney General of the State of Michigan  
on Behalf of the People of the State of Michigan,

Plaintiff,

v

J K HARRIS & COMPANY, L.L.C.; J K  
HARRIS FINANCIAL RECOVERY  
SYSTEM, L.L.C., and PROFESSIONAL  
FEE FINANCING ASSOCIATES L.L.C.

Defendants.

Hon.

No. 08-830 -CP

**FINAL CONSENT JUDGMENT and ORDER FOR PERMANENT INJUNCTION**

Issued this 12<sup>th</sup> day of June, 2008,  
in the City of Lansing, Ingham County, Michigan.

PRESENT: Honorable JUDGE WILLIAM E. COLLETTE  
Ingham County Circuit Judge

The Parties, Plaintiff Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan, and Defendants JK Harris & Company, L.L.C., JK Harris Financial Recovery System, L.L.C., and Professional Fee Financing Associates, L.L.C., as well as John K. Harris individually, have agreed to entry of this Final Consent Judgment and Order for Permanent Injunction. Defendants and John Harris have agreed to the terms of this Final Consent Judgment to voluntarily resolve this matter, have accepted service of Plaintiff's Complaint through their attorney, and waive notice of intended action under section

5(2) of the Michigan Consumer Protection Act (MCPA), MCL 445.905(2). In entering into this Final Consent Judgment, Defendants and John K. Harris do not admit or acknowledge that they have engaged in unfair or deceptive trade practices, deny Plaintiff's allegations, and represent that they are entering into this Final Consent Judgment to avoid the cost and distraction of protracted litigation. John K. Harris is not a defendant in this action but voluntarily agrees to be personally bound by all of the injunctive provisions set out in this Final Consent Judgment and agrees that any successor companies, corporations, partnerships, or sole proprietorships for which he is an owner, member manager, officer, director, or investor shall also be bound by the terms of this Final Consent Judgment.

NOW THEREFORE, the parties having requested the Court to enter this Final Judgment and Order, **IT IS HEREBY ORDERED** that:

1. This Court has jurisdiction over the parties and John Harris and the subject matter.
2. Venue is proper as to all parties in the 30<sup>th</sup> Judicial Circuit Court, Ingham County, Michigan.
3. Good cause is shown to waive notice of intended action to Defendants pursuant to MCL 445.905 (2).

**IT IS FURTHER ORDERED** that the following definitions shall apply to this Final Consent Judgment:

1. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect

the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase display, package insert, package label, product instructions, electronic mail, website, homepage, film, slide, radio, television, cable television, program-length commercial or "infomercial," or any other medium.

2. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A Clear and Conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

3. "Consumer," "client," or "customer" shall mean any person, a natural person, individual, governmental agency or entity, partnership, corporation, company, limited liability company or corporation, trust, estate, incorporated or unincorporated association, or any other legal or commercial entity, however organized.

4. "Defendants" shall mean JK Harris & Company, L.L.C. (JKHC), JK Harris Financial Recovery System, L.L.C. (FRS) and Professional Fee Financing Associates, L.L.C. (PFFA), their employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

5. "IRS's OIC Program" shall mean the IRS's program to compromise tax debts, as currently described in IRS Form 656 and the published instructions thereto.

6. "JKHC's OIC Program" shall mean JKHC's providing or offering to provide services in any way related to the filing of an "offer in compromise" with the Internal Revenue Service on behalf of any Consumer.

7. "OIC" shall mean "offer in compromise" or "offers in compromise," depending on whether the reference is in the singular or plural.

8. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "represent," including without limitation "representation," "misrepresent," and "misrepresentation."

9. "States" shall mean the states of Arkansas, Arizona, California, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Vermont, and West Virginia.

**IT IS FURTHER ORDERED** that Defendants, their members, managers, employees, directors, officers, owners, parents, agents, assigns, and other persons acting in concert with them and John Harris individually are permanently enjoined from:

10. Representing that Defendants or John Harris can settle consumers' tax debt for "pennies on the dollar," or similar representations, unless such representations are accurate and are neither deceptive nor misleading, and Defendants and John Harris have prior substantiation for making such claims.

11. Representing that Defendants or John Harris have achieved an "average acceptance" settlement amount, or similar representations, unless such representations are accurate and are neither deceptive nor misleading, and Defendants and John Harris have prior substantiation for making such claims.

12. Representing that Defendants or John Harris "would have" achieved specific resolution results for clients, "could have" achieved specific resolution results for clients, or similar representations, when, in fact, Defendants or John Harris did not achieve those specific results.

13. Representing that Defendants' or John Harris' services are or will be provided by "tax professionals," "former IRS agents," "tax experts," or similar representations, unless such representations also include a clear and conspicuous disclosure to the effect that such services will be provided, in whole or in large part, by persons who are not "tax professionals," "former IRS agents," or "tax experts."

14. Representing that Defendants or John Harris have a specific number of offices nationwide, or similar representations, unless Defendants and John Harris disclose that their sales consultants are available to meet with consumers at such locations by appointment only and such customers are provided with phone numbers for JKHC and the consultant.

15. Making any representations that compare or contrast JKHC with its competitors, unless such representations are accurate and are neither deceptive nor misleading, and Defendants and John Harris have prior substantiation for such comparisons and contrasts.

16. Representing that consumers qualify for or are eligible for the IRS's OIC Program, unless the consumers actually do qualify or actually are eligible for the IRS's OIC relief, or Defendants and John Harris have prior substantiation for such claims.

17. Charging or accepting payment from a consumer for applying to JKHC's OIC Program, unless the consumer actually qualifies or is eligible for the IRS's OIC relief, or Defendants or John Harris have previously collected information from the consumer substantiating qualification or eligibility for the IRS's OIC Program, and Defendants and John Harris clearly and conspicuously disclose that the information provided by the consumer will determine eligibility for the IRS's OIC Program and its represented benefits.

18. Representing that Defendants or John Harris will perform services for consumers in a specific manner, unless Defendants or John Harris actually do perform those services as represented, and the Defendants or John Harris have prior substantiation for making such claims.

19. Billing or charging consumers for services that Defendants or John Harris do not perform.

20. Representing that any Defendant or John Harris guarantees results, unless such representations are accurate and are neither confusing, deceptive nor misleading, and Defendants and John Harris have prior substantiation for making the guarantees.

21. Representing that Defendants' or John Harris' administrative and processing fees "may comprise up to 25%" of the fee paid by consumers, unless the Defendants or John Harris regularly provide refunds to consumers without retaining a full 25% of the fee as administrative and processing fees.

22. Representing that the IRS “consistently attempts to force taxpayers to pay more than they are legally obligated to pay,” or similar representations that have the tendency to create a false sense of urgency or fear, unless such representations are accurate and are neither deceptive nor misleading, and Defendants or John Harris have prior substantiation for making such claims.

23. Using the excerpt from The Wall Street Journal (“...[F]ar and away the Nation’s Most Successful Tax Resolution Company...”), or a similar variant thereof, unless JKHC discloses that the quotation refers to JKHC’s size rather than to the results attained by JKHC on behalf of its clients, by including a clear and conspicuous disclaimer to that effect, which shall either be located on the same page or screen, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page’s content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast or otherwise disclaimed in a clear and conspicuous manner.

24. Using endorsements/testimonials purporting to be from specifically identified consumers who have used and are recommending Defendants’ or John Harris’ services, unless such persons’ identities can be verified and the actual content of their endorsements/testimonials can be independently substantiated.

25. Using representative testimonials created from the combined comments of former or current clients, unless Defendants or John Harris disclose the fact that such endorsements are

actually composites by including a clear and conspicuous disclaimer to that effect, which shall either be located on the same page or screen, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

26. Advertising or promoting (including testimonials, solicitations, brochures, or other explanatory materials) Defendants' or John Harris' OIC or other tax debt forgiveness-related services in which Defendants or John Harris make representations, expressly or by implication, about Defendants' or John Harris' success rates or about IRS OIC statistics (including applicants' overall eligibility and likelihood of qualifying for the OIC program), or in which the Defendants or John Harris discuss or give examples of offer acceptance rates, average amounts of offers accepted by the IRS, or the rates of debt forgiveness/reduction that can be potentially achieved, unless: (a) when discussing OIC statistics or a particular case, Defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that high rates of debt forgiveness are not typical; (b) when discussing OIC average settlement amounts, Defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that acceptance amounts for individual offers in compromise are not based upon the national or overall averages of IRS tax debt forgiveness rates; (c) when discussing OIC statistics or average settlement amounts or the average number of offers accepted, Defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that



most consumers should not expect to receive a similar result because an individual consumer's outcome will not necessarily correspond with such averages. The relevant disclaimer will either be located on the same page as the representation, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

27. Making oral representations that, directly or indirectly, contradict terms or language contained in Defendants' or John Harris' written contracts with consumers.

28. Making references to IRS OIC statistics in any advertisements unless (a) Defendants and John Harris track their own OIC statistics for at least twelve months preceding the use of any IRS OIC statistics in any advertisements; (b) at the same time they make reference to the IRS OIC statistics, Defendants and John Harris shall reference their own OIC statistics in the same style, size, and format and in close proximity to any IRS OIC statistics; and (c) Defendants and John Harris provide the States, upon request, with an explanation of the process they used in tracking their own OIC statistics and any raw data used to track the statistics.

**IT IS FURTHER ORDERED** that:

29. Defendants and John Harris are permanently enjoined from acting as a "credit repair organization," as defined in 15 U.S.C. § 1679a, and as a "credit services organization," as defined in MCL 445.1822 (b), unless and until they comply with 15 U.S.C. Chapter 41,

Subchapter II-A, § 1679 *et seq.* ("Credit Repair Organizations") and MCL 445.1821 *et seq.* ("Credit Services Protection Act").

30. Defendants and John Harris are permanently enjoined from representing, directly or indirectly, to any consumer that they can help the consumer "re-establish your credit" or "rebuild your credit" or "begin to build the consumer's credit status," or using any term or phrase of similar substance and import to the effect that Defendants and John Harris will provide assistance or advice on improving any consumer's credit record, credit history, or credit rating, in return for the payment of money or other valuable consideration, unless and until Defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and MCL 445.1821 *et seq.*; provided, however, that Defendants and John Harris may use the statement: "Elimination of bad debts can improve your credit rating."

31. Defendants and John Harris are permanently enjoined from representing, directly or indirectly, to any consumer that they can or will dispute the accuracy or validity of information contained in consumers' credit reports, as defined in 15 U.S.C. § 1681a (d), or using any term or phrase of similar substance and import to the effect that Defendants and John Harris will remove or assist in removing, or correct or assist in correcting such information, in return for the payment of money or other valuable consideration, unless and until Defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and MCL 445.1821 *et seq.*

32. Defendants and John Harris are permanently enjoined from disputing, assisting in disputing or causing to be disputed the accuracy or validity of information contained in consumers' credit reports, as defined in 15 U.S.C. § 1681a (d), removing, assisting in removing,

or causing to be removed such information, and correcting, assisting in correcting or causing to be corrected such information, in return for the payment of money or other valuable consideration, unless and until Defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and MCL 445.1821 *et seq.*

33. Defendants and John Harris are permanently enjoined from engaging in any deceptive, fraudulent or illegal business acts or practices in violation of 15 U.S.C. Chapter 41, Subchapter II- A, § 1679 *et seq.*, MCL 445.1823, and MCL 445.903 (1), including, but not limited to:

- (a) Representing, directly or indirectly, to any consumer that a judgment has been filed against the consumer in any court unless Defendants and John Harris have reason to believe that a judgment has, in fact, been filed against the consumer;
- (b) Representing, directly or indirectly, to any consumer that a lawsuit has been filed against the consumer in any court unless Defendants and John Harris have reason to believe that a lawsuit has, in fact, been filed against the consumer;
- (c) Representing, directly or indirectly, to any consumer that the “public record,” or any phrase or term of similar import, indicates any factual matter pertaining to the consumer, unless Defendants or John Harris state that the “public record” upon which they relied “was obtained from the Court records where the case was filed or is pending;”
- (d) Creating a false sense of urgency or false sense of fear in any communication directed to a consumer;
- (e) Representing, directly or indirectly, that any consumer owes any debt unless Defendants and John Harris have reason to believe that the consumer, in fact, owes the debt represented;
- (f) Making oral representations that, directly or indirectly, contradict terms or language contained in Defendants’ or John Harris’ written contracts with consumers;
- (g) Referring any consumer, or in any way facilitating the consumer’s referral, to any other entity or person with common corporate parentage, unless the relationship

between Defendants, John Harris, and the entity or person is fully disclosed in writing prior to, or contemporaneously with, the referral;

- (h) Receiving any money, property or thing of value from any consumer in advance of the performance of credit repair services, as defined in 15 U.S.C. § 1679a, or in advance of engaging in the credit services business, as prohibited by MCL 445.1823 (b);
- (i) Engaging in any of the prohibited practices identified in 15 U.S.C. § 1679b, pertaining to credit repair organizations, and in MCL 445.1823, pertaining to credit repair businesses;
- (j) Misrepresenting, directly or indirectly, in its advertising, promotional materials, sales presentations, or in any manner: the nature of the services to be performed; the time within which services will be performed; the ability to settle, negotiate, reduce, discharge or otherwise modify a consumer's debt; the ability to settle, negotiate, reduce, discharge or otherwise modify judgments or other legal proceedings pending or threatened against a consumer; and the qualifications, training or experience of its personnel; and
- (k) Engaging in the unauthorized practice of law, or assisting others to engage in the unauthorized practice of law, defined to include, without limitation, the following:
  - (i) Negotiating or communicating with creditors or their attorneys concerning consumer debt or property where legal proceedings concerning such debt or property have been commenced or filed against the consumer.
  - (ii) Negotiating or communicating with creditors or their attorneys concerning the settlement, resolution, discontinuance, adjournment, vacating, release or other disposition of any legal proceedings regarding consumer debt commenced or filed against the consumer;
  - (iii) Representing, directly or indirectly, to consumers that Defendants or John Harris will "keep you out of court", "avoid a trial", settle, compromise or vacate judgments or other legal proceedings, or words of similar import and substance to the effect that Defendants or John Harris can or will resolve pending or threatened legal proceedings involving consumer debt against consumers, in return for the payment of money or other valuable consideration; and
  - (iv) otherwise acting in a representative capacity on behalf of any given consumer with creditor's attorneys on underlying consumer debt.

For purposes of this Final Consent Judgment, "legal proceedings" shall be deemed to include, without limitation and by way of example only, any actions or proceedings at law or in equity involving consumer debt which have been commenced against the consumer in any court or legal forum to recover a debt or property from the consumer; judgments entered against consumers in such actions or proceedings, and post-judgment enforcement or collection proceedings initiated against consumers in such actions or proceedings.

**IT IS FURTHER ORDERED** that Defendants, their members, managers, employees, directors, officers, owners, parents, agents, assigns, and other persons acting in concert with them and John K. Harris individually shall be permanently required to engage in the following acts or practices:

34. Prior to charging any consumer, or accepting money from any consumer, Defendants and John Harris shall clearly and conspicuously disclose, in writing and orally, the circumstances under which consumers will qualify for any benefits under the IRS's OIC Program.

35. In connection with any representations it makes relating to the number or percentage of offers in compromise accepted by the IRS, Defendants and John Harris shall clearly and conspicuously disclose the percentage or number of submitted offers that were not accepted by the IRS and shall have prior substantiation for making such claims.

36. Defendants and John Harris shall clearly and conspicuously disclose all material terms and conditions of any guarantee they offer consumers.

37. In any advertisement in which Defendants or John Harris represent that they offer a "refund," or term or phrase of similar import, Defendants and John Harris shall clearly and

conspicuously disclose that refunds are based on the amount of work performed and that the refund consideration is not based upon the success, or lack thereof, of Defendants' and John Harris' tax resolution services.

38. Defendants and John Harris shall provide consumers with full refunds or refunds on a pro-rata basis for their OIC services not performed as of the time of a consumer's refund request. Prior to entering into or accepting payment under any service agreement for the OIC services between Defendants or John Harris and consumers, Defendants and John Harris shall clearly and conspicuously disclose and explain: (a) the anticipated stages of work that will be performed in connection with the OIC services, (b) the amount of the total fee allocated to each service, (c) the refund amounts which can be expected, (d) what portion of the total fee will actually comprise any administrative/processing fees to be retained by Defendants or John Harris, (e) that financing fees will not be refunded, and (f) all conditions under which customers may be required to sign a release, including whether a refund will be conditioned on the signing of a release.

39. Defendants and John Harris shall implement policies and procedures by which all employees or independent contractors acting on behalf of Defendants and John Harris will be trained in, and required to abide by, specific measures to expediently and appropriately address the following areas (at a minimum):

- (a) the intake and timely processing of consumers' paperwork (including any and all forms or correspondence required to process applications for filing taxes, offers in compromise, or other services for which the consumer has contracted);
- (b) the intake and prompt processing of consumers' complaints, cancellations of service contracts, and requests for refunds;

- (c) prior to accepting any payment for services from consumers who request application to the IRS's OIC program, making an initial determination as to whether said applicants actually qualify for those benefits, and if not, putting them on immediate notice to that effect;
- (d) prior to accepting any payment for services from consumers who have been determined to qualify for the IRS' OIC program, the provision of accurate, straightforward information, explaining all criteria that can materially affect an applicant's eligibility for that program;
- (e) prior to entering or accepting payment under any service agreement for the OIC services between Defendants or John Harris and consumers, a clear and conspicuous explanation of the opportunity for a refund in connection with OIC services, including all of the disclosures required pursuant to paragraph 38;
- (f) in any release containing confidentiality or anti-disparagement clauses that consumers are required to sign in connection with the payment of a refund or the resolution of a dispute over a refund, the incorporation of language that specifically excepts a consumer's prerogative to cooperate with any state or federal government investigation;
- (g) establishing communication guidelines that ensure that Defendants' and John Harris' clients are regularly provided with copies of all original written correspondence (not including supporting documentation previously provided to the Defendants or John Harris by the client) to the IRS or other entities on the consumers' behalf, are promptly notified of any and all additional necessary information that they must furnish to process their applications or keep their offers current, and are provided with the means, along with clear instructions, to obtain information on the status of their case; and
- (h) establishing a new compensation plan that, instead of being based 100% on commissions, incentives, and/or bonuses, is comprised of a substantial salary component that is paid regardless of the number of sales made.

40. Defendants and John Harris shall deliver a copy of this Final Consent Judgment to all principals, members, managers, officers, directors, employees, agents, independent contractors, consultants and representatives having direct contact with consumers or having responsibilities with respect to the subject matter of this Final Consent Judgment and shall secure from each such person a signed and dated statement acknowledging receipt of the Final Consent

Judgment. Defendants and John Harris shall deliver this Final Consent Judgment to current personnel within thirty (30) days after the date of service of this Final Consent Judgment, and to new personnel within fifteen (15) days after the person assumes such position or responsibilities.

41. Defendants and John Harris shall conduct undercover interviews of their consultants and sales representatives on a continuing basis for at least three years following the entry of this Final Consent Judgment. During each calendar year, Defendants and John Harris shall conduct an undercover interview of each of their consultants and sales representatives. Defendants and John Harris shall record (audio and/or visual) the undercover interviews or reduce the results of said undercover interviews to writing. Defendants and John Harris shall make the results of said undercover interviews available to the States by providing copies of the results to each of the States on a quarterly basis. Defendants shall maintain such recording or writing for a period of one year.

42. The States may, at their discretion and in accordance with applicable state and federal law, conduct undercover interviews of Defendants' and John Harris' consultants and sales representatives for the purpose of confirming compliance with this Final Consent Judgment and state law. The test shoppers are not required to disclose that they are representatives of the State when making contact with Defendants and John Harris. Defendants and John Harris agree to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was a test shopping conducted by the State.

43. Defendants and John Harris shall record each written complaint, arbitration demand, and lawsuit received from a consumer located in Michigan and, upon request by Plaintiff, shall provide a current full and accurate list of such complaints to Plaintiff that



includes: name of complainant; address of complainant (if any); nature of complaint; date of complaint; date of resolution (if any). Defendants and John Harris shall maintain all case management system (CMS) notes entered electronically in connection with oral complaints made by Michigan consumers. Nothing herein shall preclude, limit, or otherwise alter the right of the Plaintiff to request documents, including but not limited to the CMS notes by subpoena issued pursuant to MCL 445.907.

**IT IS FURTHER ORDERED** that:

44. Defendants and John Harris shall include in all contracts with consumers the following notice, which shall appear conspicuously in boldface, capitalized font of at least fourteen (12) point type:

**"IMPORTANT: IF YOU HAVE RECEIVED OR BEEN SERVED WITH LEGAL PAPERS, OR SUMMONED TO APPEAR IN COURT, YOU SHOULD CONSIDER CONSULTING WITH A PRIVATE ATTORNEY IMMEDIATELY, EVEN IF YOU RETAIN (NAME OF COMPANY) TO RESOLVE YOUR TAX PROBLEMS OR NEGOTIATE YOUR DEBTS. YOUR FAILURE TO RESPOND TO LEGAL PAPERS OR APPEAR IN COURT MAY RESULT IN SERIOUS LEGAL CONSEQUENCES. (NAME OF COMPANY) IS NOT A LAW FIRM. WE CANNOT REPRESENT YOU IN LEGAL PROCEEDINGS OR APPEAR IN COURT, OR RESPOND TO LEGAL PAPERS, ON YOUR BEHALF."**

Prior to entering into a contract with a consumer, Defendants' or John Harris' sales representative or consultant shall direct the consumer's attention to the foregoing notice and request the consumer to read such notice. Following the consumer's reading of the notice, Defendants' or John Harris' sales representative or consultant shall request the consumer to place his or her initials on a blank line, which shall be in close proximity to such notice.

45. Prior to entering into a contract with a consumer, Defendants' or John Harris' sales representative or consultant shall disclose orally to such consumer that a substantial part of his or her income is based on the number of contracts sold to consumers. The written contract

shall also contain the following disclosure in close proximity to and in the same type font as the three-day right of cancellation: "A substantial part of our sales consultants' income is based upon the number of contracts they sell."

**IT IS FURTHER ORDERED** that:

46. Defendants shall pay to the States restitution in the sum of \$1,500,000.

Defendants shall pay the sum as follows:

- (a) \$900,000 shall be paid prior to the entry of this Final Consent Judgment; and
- (b) the remaining \$600,000 shall be paid in equal monthly installments of \$70,000 on the first day of each month until the full \$1,500,000 is paid;

47. Defendants shall pay the sum of \$300,000 to the States collectively which shall be divided as determined by the States for additional restitution, attorneys' fees, investigative costs, and consumer protection purposes at the discretion of each State's Attorney General.

48. Defendants shall pay the \$300,000 in equal monthly installments of \$100,000 each month beginning the month after the completion of the payment of \$1,500,000 until the \$300,000 is paid in full.

49. Defendants shall make payments by cashier's check made out to the North Carolina Department of Justice and sent to the attention of Harriet F. Worley, Assistant Attorney General.

50. All unpaid sums shall be immediately due and owing upon the sale of JKHC, or on the sale of the majority of its assets, or on a merger with another entity.

51. John K. Harris personally guarantees the full amount of all payments as indicated on the guarantee agreement which is attached to this Final Consent Judgment as Exhibit A and is incorporated by reference. In the event of a default, the State of North Carolina by and through its Attorney General and on behalf of the other States, as that term is defined in this agreement,

may file an action to collect from John K. Harris on anything which remains unpaid.

52. Upon making each of the payments specified in Paragraphs 46 and 48, Defendants and John K. Harris shall be fully divested of any interest in, or ownership of, any monies paid and any interest in the monies, and the monies and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the States, or the consumers who will receive refunds, pursuant to the terms of this Final Consent Judgment.

53. In the event of a default of any payment obligation imposed by this Final Consent Judgment, and in addition to any other relief or remedy elected or pursued by the States, all payments set forth in Paragraphs 46 and 48 shall be accelerated and shall become, as of the date of default, due and owing in their entirety.

54. Defendants and John Harris have represented and warranted that they have reviewed their financial situation and that:

- (a) This Final Consent Judgment and any releases given in connection herewith shall not release or extinguish a nondischargeability claim under 11 U.S.C. § 523(a) based upon the conduct that formed the basis for Plaintiff's underlying claims herein, and Plaintiff reserves the right to file a nondischargeability complaint (if required) in the event a bankruptcy is filed prior to payment of the full Settlement Amount. Further, Defendants agree that nothing in this Final Consent Judgment and /or in any release shall be construed to constitute an accord and satisfaction or a novation of Plaintiff's claims for fraud, illegality, and deceptive practices or the like to that of a contract claim. In the event of an intervening bankruptcy, each and every underlying claim upon which this Final Consent Judgment is based may form the basis for a subsequent nondischargeability claim and Plaintiff is free to show in the bankruptcy court that the underlying claims herein had their genesis in or originated from fraud; and
- (b) The parties and John Harris agree that this Final Consent Judgment will be admissible in any bankruptcy matter.

55. Michigan consumers who entered into contracts with Defendants prior to the entry of this Final Consent Judgment are eligible for a pro rata refund from the restitution pool to the extent they have not already received a refund directly from Defendants if they either: (a)

filed a complaint against Defendants with the Consumer Protection Division of the Michigan Department of Attorney General prior to the entry of this Consent Judgment; or (b) within ninety days of the entry of this Final Consent Judgment file a complaint against Defendants with the Consumer Protection Division of the Michigan Department of Attorney General; or (c) filed a complaint with the Better Business Bureau or South Carolina Department of Consumer Affairs prior to or within 90 days of entry of this Consent Judgment, which is subject of timely receipt by the Consumer Protection Division of the Michigan Department of Attorney General.

56. Defendants and John Harris shall cancel the contracts and any amounts allegedly due and owing by JKHC and FRS consumers who have requested refunds or have made written complaints to JKHC and FRS. JKHC and FRS shall not negatively report such cancellation to a credit reporting agency and will send a letter to the credit reporting agencies with a copy to the individual consumer and the Plaintiff requesting that the consumer's obligation to JKHC or FRS be marked satisfied in full and any prior negative reports be deleted by the credit reporting agencies.

57. Any release entered into by any consumer with JKHC in no way limits the amount of restitution that Plaintiff can pay to such consumer. Except as provided in this paragraph, the remaining terms and provisions of any such release will remain valid and binding on the consumer signing such release and on JKHC and shall be unaltered by this Final Consent Judgment.

**IT IS FURTHER ORDERED that:**

58. Defendants and John Harris shall undertake to respond to all consumer complaints in good faith and in a reasonable, timely manner.

59. Nothing in this Final Consent Judgment shall be construed as relieving the

Defendants or John K. Harris of their obligations to comply with all state and federal laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

60. The Defendant's and John Harris have provided the States with certain documents, advertisements, and contracts. The Defendants and John Harris acknowledge and agree that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Order, or a release of any issues relating to such documents.

61. This Final Consent Judgment shall not bind any other agencies, boards, commissions or offices of the State of Michigan.

62. This Final Consent Judgment shall not limit the rights of any private party to pursue any remedies allowed by law.

63. If any portion of this Final Consent Judgment is held invalid by operation of law, the remaining terms of this Final Consent Judgment shall not be affected and shall remain in full force and effect.

64. The State agrees to act in good faith and with due regard to fairness when considering whether to initiate court proceedings for a violation of this Consent Judgment against the Defendants or John Harris. It is not the State of Michigan's intention to initiate contempt proceedings regarding violations of this Consent Judgment for a single, isolated, and unintentional mistake. Except as otherwise agreed, the State does not intend to hold Defendants' members, managers, agents, servants, and employees financially responsible for any monetary relief, penalties, or restitution related to conduct that occurred prior to entry of this Consent Judgment except to the extent John Harris is personally bound by the Permanent Injunction and

through a personal guarantee for the full amount of all payments set out in paragraphs 46 through 48 and 51.

65 Any notices required to be sent to the Plaintiff or to the Defendants by this Final Consent Judgment shall be sent by United States mail or certified mail return receipt requested.

The documents shall be sent to the following addresses:

For the Plaintiff:

Michigan Department of Attorney General  
Consumer Protection Division  
AT: Katharyn Barron, Division Chief  
P.O. Box 30213  
Lansing, MI 48909

For the Defendants:

Director of Legal Affairs  
JK Harris & Company, L.L.C.  
4995 Lacross Road, Suite 1800  
North Charleston, SC 29406

For John K. Harris:

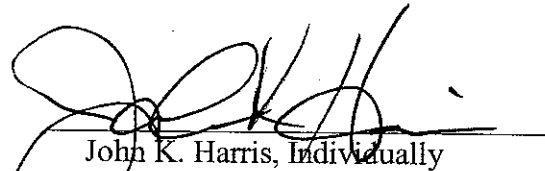
John K. Harris  
JK Harris & Company, L.L.C.  
4995 Lacross Road, Suite 1800  
North Charleston, SC 29406

Dated : 6-12, 2008

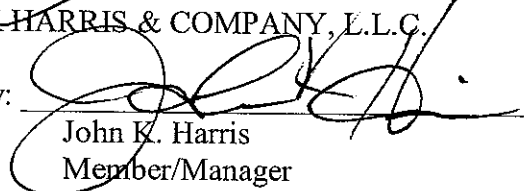
**JUDGE WILLIAM E. COLLETTE**  
Honorable \_\_\_\_\_  
Ingham County Circuit Court Judge

**WE CONSENT:**

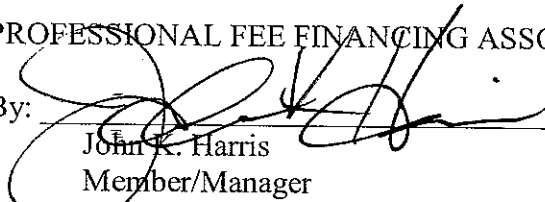
Dated: JAN 22 2008

  
John K. Harris, Individually

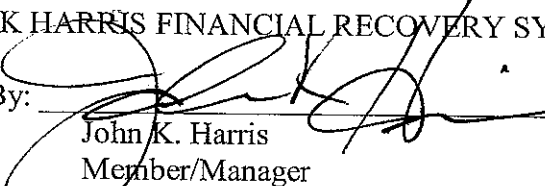
Dated: JAN 22 2008

JK HARRIS & COMPANY, L.L.C.  
By:   
John K. Harris  
Member/Manager

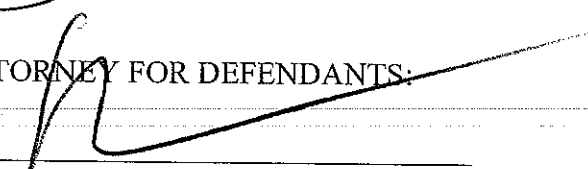
Dated: JAN 22 2008

PROFESSIONAL FEE FINANCING ASSOCIATES, L.L.C.  
By:   
John K. Harris  
Member/Manager

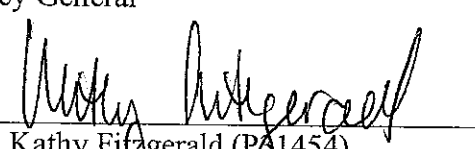
Dated: JAN 22 2008

JK HARRIS FINANCIAL RECOVERY SYSTEMS, L.L.C.  
By:   
John K. Harris  
Member/Manager

Dated: 3/21/08

ATTORNEY FOR DEFENDANTS:  
  
Harvey R. Heller (P27351)  
Maddin Hauser Wartell Roth & Heller, PC  
28400 Northwestern Hwy. Ste. 300  
Southfield, MI 48034

Dated: 6/12/08

MICHAEL A. COX  
Attorney General  
By:   
Kathy Fitzgerald (P31454)  
Assistant Attorney General  
Consumer Protection Division  
PO Box 30213  
Lansing, MI 4809  
517-335-0855

A



## PERSONAL GUARANTY

This Guaranty Agreement ("Guaranty") is entered into by:

Guarantor: John K. Harris ("Guarantor"), and

Creditor: The State of North Carolina on behalf of the States of Arkansas, Arizona, California, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Vermont, and West Virginia ("Creditor" and "States").

Amount Guaranteed: Nine Hundred Thousand Dollars (\$900,000) ("Guaranteed Obligations").

### 1. Guaranty

For valuable consideration, the receipt of which is hereby acknowledged, the Guarantor personally, unconditionally and irrevocably guarantees the full and prompt payment in lawful money of the United States to the Creditor, whether at stated maturity, by acceleration, demand or otherwise of restitution in the amount of \$600,000, and attorneys' fees, investigative costs, and consumer protection expenditures in the amount of \$300,000, or any unpaid balance thereunder, now or hereafter owed by J.K. Harris & Company, LLC, JK Harris Financial Recovery System, LLC, and Professional Fee Financing Associates, L.L.C. ("Debtor") to the Creditor under or pursuant to the Consent Judgment (a copy of which is attached hereto as Exhibit "A") entered by the Creditor against the Debtor in Wake County Superior Court court on June 11, 2008, 2007 (hereinafter "the CJ"). The total amount of indebtedness guaranteed hereunder by Guarantor is \$900,000.

This is a guaranty of payment only and not of collection. Guarantors' obligations under this Guaranty are independent of those of Debtor. Creditor may bring a separate action against Guarantor without proceeding against Debtor and without pursuing any other remedy. Guarantor waives any right to require Creditor to proceed against Debtor, or pursue any other remedy in Creditor's power whatsoever.

### 2. Waiver of Defenses and Claims

Guarantor waives and agrees not to assert or take advantage of:

- a. any defense based upon any disability or other defense of Debtor, or any limitation or discharge from any cause whatsoever of the liability of Debtor, or any defense based upon any restraint or stay applicable to actions against Debtor, whether such disability, discharge, limitation, restraint or stay is consensual, or arising by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, insolvency, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding, or from any other cause, including any defense to the payment of interest, attorneys' fees and costs, and

other charges that otherwise would accrue or become payable in respect to the Guaranteed Obligations after the commencement of any such proceeding;

- b. setoff, counterclaim, presentment, demands for performance, notices of non-performance, protest, notice of protest, notice of nonpayment, notice of dishonor of this Guaranty or other notice of any kind and all surety and Guarantor defenses;
- c. any defense based upon a statute of limitations and any defense based upon Creditor's delay in enforcing this Guaranty, the CJ or any other agreement. Any payment by Debtor or other circumstance which operates to toll any statute of limitations as to Debtor shall operate to toll the statute of limitations as to Guarantor;
- d. any defense based upon the modification, renewal, compromise, settlement, extension, substitution or other alteration of any of the Guaranteed Obligations or the CJ, or of the documents executed in connection therewith. Guarantor authorizes Creditor, without notice or demand and without affecting Guarantor's liability hereunder, from time to time to renew, compromise, extend, accelerate or otherwise change the time for Debtor's payments under the CJ. No right or power of Creditor hereunder shall be deemed to have been waived by any act or conduct on the part of Creditor, or by any neglect to exercise such right or power, or by any delay in so doing; and every right or power shall continue in full force and effect until specifically waived or released by an instrument in writing executed by Creditor;
- e. any defense based upon or arising out of any defense which Debtor or any other guarantor or other person may have to the performance of any part of the Guaranteed Obligations.

### 3. **Rights of Creditor**

Guarantor authorizes Creditor at any time in Creditor's sole discretion to take any of the following actions on such terms and conditions as Creditor may elect, without giving notice to Guarantor or obtaining the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty:

- a. alter any of the terms and/or documentation of any of the Guaranteed Obligations or the CJ, including renewing, amending, releasing, waiving, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the Guaranteed Obligations;
- b. accept new or additional documents, instruments or agreements relative to the

Guarantied Obligations or the COJ;

- c. accept partial payments on the Guarantied Obligations or the CJ;
- d. take and hold any security or additional guaranties for the Guarantied Obligations or the CJ and amend, alter, exchange, substitute, transfer, enforce, perfect or fail to perfect, waive, subordinate, terminate, compromise, or release any such security or guaranties;
- e. settle, release on terms satisfactory to Creditor or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate the Guarantied Obligations and/or the security or any guaranty therefor in any manner;
- f. release Debtor or any other person of its liability for all or any of the Guarantied Obligations or the CJ;
- g. participate in any settlement offered by Debtor, any guarantor or any other person, whether in liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding or otherwise;
- h. exercise or not exercise rights available to it in any liquidation, reorganization, receivership, bankruptcy, assignment for benefit of creditors or other debtor-relief proceeding, including voting or not voting to accept a plan and filing or not filing a proof of claim;
- i. release, substitute or add any one or more guarantors or endorsers; and
- j. assign its rights under this Guaranty in whole or in part.

4. **Default**

In the event of default of Debtor to make payment to Creditor under the CJ, when due, Guarantor agrees, without the Creditor first having to proceed against the Debtor, to pay on demand all sums due and to become due to the Creditor from Debtor and all losses, costs, attorney's fees, or expenses which the Creditor may incur in enforcing this guaranty or in any action or proceeding arising out of, or relating to this guaranty, by reason of Debtors' default.

Each of the following shall constitute a default of Guarantor under this Guaranty, entitling Creditor, at its option and in addition to its other remedies, to collect immediately from Guarantor the full amount of the Guarantied Obligations notwithstanding any otherwise applicable due date with respect thereto:

- a. the occurrence of any breach of, default or event of default under or failure to

comply with, perform or pay when due, whether on demand or otherwise, any term, provision, covenant, representation or warranty or condition under the COJ by Debtor or Guarantor;

- b. the failure of Guarantor to perform any of his obligations under this Guaranty;
- c. the failure of Guarantor to comply with any of the other terms or provisions of this Guaranty;
- d. the revocation or purported revocation by Guarantor of this Guaranty; or
- e. the death of Guarantor.

5. **Bankruptcy**

The obligations of Guarantor under this Guaranty shall not be altered, limited, stayed or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Debtor, or by any defense Debtor may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. Any stay of enforcement or of acceleration of the time for payment of any of the Guaranteed Obligations as against Debtor or any other person shall have no effect upon Guarantors' liability under this Guaranty or the time for payment by Guarantors hereunder.

Guarantor waives any defense based upon any action taken or omitted by Creditor in any bankruptcy or other insolvency proceeding involving Debtor or any other person, including any election to have Creditor's claim allowed as secured, partially secured or unsecured.

The liability of Guarantor hereunder shall continue in effect notwithstanding any payment or performance of the Guaranteed Obligations by Debtor or any other person, such that, if any such payment or performance is avoided or recovered from Creditor or Creditor is otherwise required to restore or return any such payment or performance in connection with the bankruptcy, insolvency or reorganization of Debtor or otherwise, Guarantor shall remain liable hereunder as though such payment or performance had not occurred.

6. **Subordination**

All existing and future obligations of Debtor to Guarantor (including, without limitation, any obligations arising by reason of any payment or performance by Guarantor hereunder) are hereby subordinated to the full and indefeasible payment and performance of the Guaranteed Obligations to Creditor.

Upon any default under any of the Guaranteed Obligations or hereunder, all obligations of

Debtor to Guarantor shall be collected, enforced and received by Guarantor as trustee for Creditor, and all amounts received shall be paid over to Creditor, for application to the Guaranteed Obligations.

7. **Governing Law and Venue**

This Guaranty shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without regard to conflict of law provisions. Venue for any action or proceeding brought under this Guaranty will be at Creditors' option, in Wake County Superior Court in the State of North Carolina. The Attorney General of the State of North Carolina may enforce this guaranty and may commence an action or proceeding on behalf of the Creditor. Guarantor waives any defense or objection based on lack of personal jurisdiction in any such action or proceeding. Guarantor hereby accepts for himself, generally and unconditionally, the non-exclusive jurisdiction of the foregoing court. Guarantor irrevocably consents to the service of process in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at his respective address for notices pursuant to this Guaranty. Nothing contained herein shall affect the right of Creditor to serve process in any other manner permitted by law. Guarantor waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

8. **Binding Effect**

This guarantee is binding upon Guarantor and his respective heirs, executors, administrators, successors and assigns, and inures to the benefit of and is enforceable by Creditor and their successors, transferees and assigns.

9. **Miscellaneous Provisions**

This Guaranty constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings. No provision of this Guaranty or Creditors' rights hereunder can be waived or modified nor can Guarantors be released from their obligations hereunder except by a writing executed by Creditor.

This Guaranty may be signed in counterparts, which together shall constitute the agreement of the parties when each party has signed a counterpart.

10. **GUARANTOR'S ADDRESS FOR NOTICE:**

John Harris  
1036 Wharf Indigo Place  
Mt. Pleasant South Carolina 29464

**CREDITORS' ADDRESS FOR NOTICE**

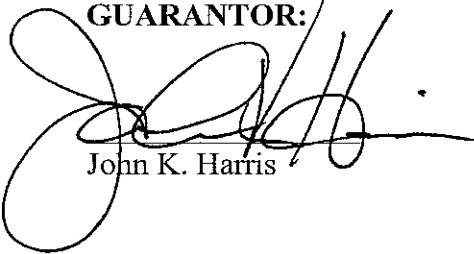
North Carolina Department of Justice  
Consumer Protection Division  
Att: Harriet F. Worley  
Assistant Attorney General  
P.O. Box 629  
Raleigh, North Carolina 27602

**11. Severability.**

The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect the validity or enforceability of any other provision.

Dated: JAN 22 2008, 2007

**GUARANTOR:**



John K. Harris

a

051 13279

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.

COUNTY OF WAKE

STATE OF NORTH CAROLINA *ex rel*  
ROY COOPER, Attorney General

Plaintiff,

v.

JK HARRIS & COMPANY, L.L.C.; JK  
HARRIS FINANCIAL RECOVERY  
SYSTEM, L.L.C., and PROFESSIONAL  
FEE FINANCING ASSOCIATES L.L.C.

Defendants

CONSENT JUDGMENT  
AND PERMANENT INJUNCTION

WAKE COUNTY, N.C.S.C.

2008 JUN 11 AM 9:19

FILED

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in Wake County for entry of a Consent Judgment between plaintiff State of North Carolina *ex rel* Roy Cooper, Attorney General, and defendants JK Harris & Company, L.L.C., JK Harris Financial Recovery System, L.L.C., and Professional Fee Financing Associates, L.L.C., as well as John K. Harris individually. The Court, with the consent of the parties and John K. Harris, makes the following:

FINDINGS OF FACTS

1. Plaintiff is the State of North Carolina, acting on relation of Roy Cooper, Attorney General, pursuant to authority granted in Chapters 75 and 114 of the General Statutes of North Carolina.
2. Defendant JK Harris and Company, L.L.C. (JKHC) is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. Its principal address is 4995 Lacross Road, North Charleston, South Carolina 29406. JKHC is in



the business of advertising its services to file offers in compromise (OIC) with the Internal Revenue Service (IRS) on behalf of North Carolina consumers, who are behind on paying their taxes, and collecting a fee from consumers prior to the services being completed.

3. Defendant JK Harris Financial Recovery System, L.L.C. (FRS) is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. FRS was in the business of offering debt resolution services to consumers in North Carolina and collecting fees for services prior to rendering them.

4. Defendant Professional Fee Financing Associates, L.L.C. (PFFA) is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. PFFA extends credit to consumers in North Carolina by financing the contracts North Carolina consumers entered into with JKHC.

5. John K. Harris is a resident of South Carolina and is the member manager for JKHC, FRS, and PFFA. John K. Harris is not a defendant in this action but voluntarily agrees to be personally bound by all of the injunctive provisions set out in this Consent Judgment and agrees that any successor companies, corporations, partnerships, or sole proprietorships for which he is an owner, member manager, officer, director, or investor shall also be bound by the terms of this Consent Judgment.

6. The State alleges that since 1999, the Consumer Protection Division of the North Carolina Attorney General's Office has received 105 complaints from North Carolina consumers concerning the practices of JKHC. According to the complaints, defendants and John Harris advertised widely that JKHC could assist consumers who owe money to the IRS and state revenue offices by filing for an OIC so that consumers may repay the IRS and state revenue

offices for "pennies on the dollar." However, that was not the case.

7. The State alleges that defendants and John Harris advertised that JKHC had more than 450 offices nationwide. This advertisement led consumers to believe that the JKHC representative at the office near the consumer's home would be the one who would be handling the consumer's matter for JKHC when that was not the case. Instead, the offices were only sales offices which were not open during regular business hours unless a sales agent was present to meet with prospective clients, and the person handling the consumer's OIC was actually located at the JKHC home office in North Charleston, South Carolina. Once the consumer met with the sales agent, the consumer was not able to meet in person with the person handling his or her case unless the consumer traveled to Charleston, South Carolina.

8. The State alleges that defendants' and John Harris' advertising also led consumers to believe that the work on their files would be handled by "tax experts," "tax professionals," and "ex-IRS agents," but the work of preparing the OIC offers was not performed by these trained "experts." Instead the work was handled by employees without the advertised expertise.

9. The State alleges that consumers complained that JKHC did not provide the services it advertised. Consumer complaints indicated that the consumers would have a case manager assigned to their "cases," but the case managers changed frequently, and the consumers were generally asked to provide the same documentation on several different occasions because the new case manager could not locate the requested information in the file. Consumers also complained that in cases where the case manager actually filed an OIC for a consumer, the information was out of date, and the IRS would request updated information, further delaying the consumer's attempt to receive approval on the proposed OIC. Consumers further complained

that when they tried to reach their case manager to discuss their cases, they were unable to speak with the case manager or to get an accurate report of the status of their cases.

10. The State alleges that according to IRS statistics, the percentage of consumers who are actually approved for OIC is very small and defendants and John Harris repeatedly took money from consumers without fully investigating whether the consumer would qualify for an OIC or while knowing that the consumer would not qualify for an OIC.

11. The State alleges that defendants and John Harris did not always perform the work promised by their contracts and, in many cases, failed to ever apply for the OIC for the consumers yet refused to return the money the consumers had paid for the services.

12. The State alleges that defendant FRS sent deceptive mailings to residents of North Carolina informing the consumers that someone had filed a judgment against him or her in a North Carolina court when that was not the case. FRS deceptively offered to help the consumer negotiate the debt and repair his or her credit when there was no debt which would affect the consumer's credit.

13. The State alleges that defendant PFFA financed consumer contracts for consumers who entered into installment contracts with JKHC for the preparation and filing of OIC. When these services were not provided as promised, PFFA would not release the consumer from the debt.

14. Defendants' and John Harris' alleged unfair or deceptive business practices were in or affecting commerce in North Carolina.

15. Defendants and John Harris have agreed to the terms of this Consent Judgment to voluntarily resolve this matter. In entering into this Consent Judgment, defendants and John K.

Harris do not admit or acknowledge that they have engaged in unfair or deceptive trade practices, deny plaintiff's allegations, and represent that they are entering into this Consent Judgment to avoid the cost and distraction of protracted litigation.

### CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and John Harris and the subject matter.
2. Entry of this Consent Judgment is just and proper.
3. There is sufficient factual evidence to support the State's allegations that defendants and John Harris have committed unfair or deceptive business practices in violation of N.C.G.S. § 75-1.1 in the operation of JKHC, FRS, and PFFA, and the Court finds good and sufficient cause to adopt the agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for the entry of this Consent Judgment.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the following definitions shall apply to this Consent Judgment:

1. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase display, package insert, package label, product instructions, electronic mail, website, homepage, film, slide, radio, television, cable television, program-length commercial or "infomercial," or any other medium.

2. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A Clear and Conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

3. "Consumer," "Client," or "Customer" shall mean any person, a natural person, individual, governmental agency or entity, partnership, corporation, company, limited liability company or corporation, trust, estate, incorporated or unincorporated association, or any other legal or commercial entity, however organized.

4. "Defendants" shall mean JKHC, FRS & PFFA, their employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

5. "IRS's OIC Program" shall mean the IRS's program to compromise tax debts, as currently described in IRS Form 656 and the published instructions thereto.

6. "JKHC's OIC Program" shall mean JKHC's providing or offering to provide services in any way related to the filing of an "offer in compromise" with the Internal Revenue Service on behalf of any Consumer.

7. "OIC" shall mean "offer in compromise" or "offers in compromise," depending

similar representations, when, in fact, defendants or John Harris did not achieve those specific results.

13. Representing that defendants or John Harris' services are or will be provided by "tax professionals," "former IRS agents," "tax experts," or similar representations, unless such representations also include a clear and conspicuous disclosure to the effect that such services will be provided, in whole or in large part, by persons who are not "tax professionals," "former IRS agents," or "tax experts."

14. Representing that defendants or John Harris have a specific number of offices nationwide, or similar representations, unless defendants and John Harris disclose that their sales consultants are available to meet with consumers at such locations by appointment only and such customers are provided with phone numbers for JKHC and the consultant.

15. Making any representations that compare or contrast JKHC with its competitors, unless such representations are accurate and are neither deceptive nor misleading, and defendants and John Harris have prior substantiation for such comparisons and contrasts.

16. Representing that consumers qualify for or are eligible for the IRS's OIC Program, unless the consumers actually do qualify or actually are eligible for the IRS's OIC relief, or defendants and John Harris have prior substantiation for such claims.

17. Charging or accepting payment from a consumer for applying to JKHC's OIC Program, unless the consumer actually qualifies or is eligible for the IRS's OIC relief, or defendants or John Harris have previously collected information from the consumer substantiating qualification or eligibility for the IRS's OIC Program, and defendants and John Harris clearly and conspicuously disclose that the information provided by the consumer will

determine eligibility for the IRS's OIC Program and its represented benefits.

18. Representing that defendants or John Harris will perform services for consumers in a specific manner, unless defendants or John Harris actually do perform those services as represented, and the defendants or John Harris have prior substantiation for making such claims.

19. Billing or charging consumers for services that defendants or John Harris do not perform.

20. Representing that any defendant or John Harris guarantees results, unless such representations are accurate and are neither confusing, deceptive nor misleading, and defendants and John Harris have prior substantiation for making the guarantees.

21. Representing that defendants' or John Harris' administrative and processing fees "may comprise up to 25%" of the fee paid by consumers, unless the defendants or John Harris regularly provide refunds to consumers without retaining a full 25% of the fee as administrative and processing fees.

22. Representing that the IRS "consistently attempts to force taxpayers to pay more than they are legally obligated to pay," or similar representations that have the tendency to create a false sense of urgency or fear, unless such representations are accurate and are neither deceptive or misleading, and defendants or John Harris have prior substantiation for making such claims.

23. Using the excerpt from The Wall Street Journal ("...[F]ar and away the Nation's Most Successful Tax Resolution Company..."), or a similar variant thereof, unless JKHC discloses that the quotation refers to JKHC's size rather than to the results attained by JKHC on behalf of its clients, by including a clear and conspicuous disclaimer to that effect, which shall either be located on the same page or screen, or if on a website, be immediately accessible via a

link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast or otherwise disclaimed in a clear and conspicuous manner.

24. Using endorsements/testimonials purporting to be from specifically identified consumers who have used and are recommending defendants' or John Harris' services, unless such persons' identities can be verified and the actual content of their endorsements/testimonials can be independently substantiated.

25. Using representative testimonials created from the combined comments of former or current clients, unless defendants or John Harris disclose the fact that such endorsements are actually composites, by including a clear and conspicuous disclaimer to that effect, which shall either be located on the same page or screen, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

26. Advertising or promoting (including testimonials, solicitations, brochures, or other explanatory materials) defendants' or John Harris' OIC or other tax debt forgiveness-related services in which defendants or John Harris make representations, expressly or by



implication, about or defendants' or John Harris' success rates or about IRS OIC statistics (including applicants' overall eligibility and likelihood of qualifying for the OIC program), or in which the defendants or John Harris discuss or give examples of offer acceptance rates, average amounts of offers accepted by the IRS, or the rates of debt forgiveness/reduction that can be potentially achieved, unless: (a) when discussing OIC statistics or a particular case, defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that high rates of debt forgiveness are not typical; (b) when discussing OIC average settlement amounts, defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that acceptance amounts for individual offers in compromise are not based upon the national or overall averages of IRS tax debt forgiveness rates; (c) when discussing OIC statistics or average settlement amounts or the average number of offers accepted, defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that most consumers should not expect to receive a similar result because an individual consumer's outcome will not necessarily correspond with such averages. The relevant disclaimer will either be located on the same page as the representation, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

27. Making oral representations that, directly or indirectly, contradict terms or language contained in defendants' or John Harris' written contracts with consumers.

28. Making references to IRS OIC statistics in any advertisements unless (a) defendants and John Harris track their own OIC statistics for at least twelve months preceding the use of any IRS OIC statistics in any advertisements; (b) at the same time they make reference to the IRS OIC statistics, defendants and John Harris shall reference their own OIC statistics in the same style, size, and format and in close proximity to any IRS OIC statistics; and (c) defendants and John Harris provide the States, upon request, with an explanation of the process they used in tracking their own OIC statistics and any raw data used to track the statistics.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT

29. Defendants and John Harris are permanently enjoined from acting as a "credit repair organization," as defined in 15 U.S.C. § 1679a, and as a "credit repair business," as defined in N.C.G.S. § 66-221, unless and until they comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* ("Credit Repair Organizations") and N.C.G.S. § 66-220 *et seq.* ("Credit Repair Services Act").

30. Defendants and John Harris are permanently enjoined from representing, directly or indirectly, to any consumer that they can help the consumer "re-establish your credit" or "rebuild your credit" or "begin to build the consumer's credit status," or using any term or phrase of similar substance and import to the effect that defendants and John Harris will provide assistance or advice on improving any consumer's credit record, credit history, or credit rating, in return for the payment of money or other valuable consideration, unless and until defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and N.C.G.S. § 66-220 *et seq.*; provided, however, that defendants and John Harris may use the statement: "Elimination of bad debts can improve your credit rating."

31. Defendants and John Harris are permanently enjoined from representing, directly or indirectly, to any consumer that they can or will dispute the accuracy or validity of information contained in consumers' credit reports, as defined in 15 U.S.C. § 1681a (d), or using any term or phrase of similar substance and import to the effect that defendants and John Harris will remove or assist in removing, or correct or assist in correcting such information, in return for the payment of money or other valuable consideration, unless and until defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and N.C.G.S. § 66-220 *et seq.*

32. Defendants and John Harris are permanently enjoined from disputing, assisting in disputing or causing to be disputed the accuracy or validity of information contained in consumers' credit reports, as defined in 15 U.S.C. § 1681a (d); removing, assisting in removing, or causing to be removed such information; and correcting, assisting in correcting or causing to be corrected such information, in return for the payment of money or other valuable consideration, unless and until defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and N.C.G.S. § 66-220 *et seq.*

33. Defendants and John Harris are permanently enjoined from engaging in any deceptive, fraudulent or illegal business acts or practices in violation of 15 U.S.C. Chapter 41, Subchapter II- A, § 1679 *et seq.*, N.C.G.S. § 66-223, and N.C.G.C. § 75-1.1, including, but not limited to:

(a) Representing, directly or indirectly, to any consumer that a judgment has been filed against the consumer in any court unless defendants and John Harris have reason to believe that a judgment has, in fact, been filed against the consumer;

(b) Representing, directly or indirectly, to any consumer that a lawsuit has been filed

against the consumer in any court unless defendants and John Harris have reason to believe that a lawsuit has, in fact, been filed against the consumer;

(c) Representing, directly or indirectly, to any consumer that the "public record," or any phrase or term of similar import, indicates any factual matter pertaining to the consumer, unless defendants or John Harris state that the "public record" upon which they relied "was obtained from the Court records where the case was filed or is pending;"

(d) Creating a false sense of urgency or false sense of fear in any communication directed to a consumer;

(e) Representing, directly or indirectly, that any consumer owes any debt unless defendants and John Harris have reason to believe that the consumer, in fact, owes the debt represented;

(f) Making oral representations that, directly or indirectly, contradict terms or language contained in defendants' or John Harris' written contracts with consumers;

(g) Referring any consumer, or in any way facilitating the consumer's referral, to any other entity or person with common corporate parentage, unless the relationship between defendants, John Harris, and the entity or person is fully disclosed in writing prior to, or contemporaneously with, the referral;

(h) Receiving any money, property or thing of value from any consumer in advance of engaging in business as a credit repair organization, as defined in 15 U.S.C. § 1679a, or in advance of engaging in the credit repair business, as prohibited by N.C.G.S. § 66-223(1);

(i) Engaging in any of the prohibited practices identified in 15 U.S.C. § 1679b, pertaining to credit repair organizations, and in N.C.G.S. § 66-223, pertaining to credit

repair businesses;

(j) Misrepresenting, directly or indirectly, in its advertising, promotional materials, sales presentations, or in any manner: the nature of the services to be performed; the time within which services will be performed; the ability to settle, negotiate, reduce, discharge or otherwise modify a consumer's debt; the ability to settle, negotiate, reduce, discharge or otherwise modify judgments or other legal proceedings pending or threatened against a consumer; and the qualifications, training or experience of its personnel; and

(k) Engaging in the unauthorized practice of law, or assisting others to engage in the unauthorized practice of law, defined to include, without limitation, those acts and practices specified in N.C.G.S. §§ 84-4 and 84-5, in addition to the following:

(i) Negotiating or communicating with creditors or their attorneys concerning consumer debt or property where legal proceedings concerning such debt or property have been commenced or filed against the consumer.

(ii) Negotiating or communicating with creditors or their attorneys concerning the settlement, resolution, discontinuance, adjournment, vacating, release or other disposition of any legal proceedings regarding consumer debt commenced or filed against the consumer;

(iii) Representing, directly or indirectly, to consumers that defendants or John Harris will "keep you out of court", "avoid a trial," settle, compromise or vacate judgments or other legal proceedings, or words of similar import and substance to the effect that defendants or John Harris can or will resolve pending or threatened legal proceedings involving consumer debt

against consumers, in return for the payment of money or other valuable consideration; and

- (iv) otherwise acting in a representative capacity on behalf of any given consumer with a creditor's attorney on underlying consumer debt.

For purposes of this Consent Judgment, "legal proceedings" shall be deemed to include, without limitation and by way of example only, any actions or proceedings at law or in equity involving consumer debt which have been commenced against the consumer in any court or legal forum to recover a debt or property from the consumer; judgments entered against consumers in such actions or proceedings, and post-judgment enforcement or collection proceedings initiated against consumers in such actions or proceedings.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT defendants, their members, managers, employees, directors, officers, owners, parents, agents, assigns, and other persons acting in concert with them and John K. Harris individually shall be permanently required to engage in the following acts or practices:

34. Prior to charging any consumer, or accepting money from any consumer, defendants and John Harris shall clearly and conspicuously disclose, in writing and orally, the circumstances under which consumers will qualify for any benefits under the IRS's OIC Program.

35. In connection with any representations it makes relating to the number or percentage of offers in compromise accepted by the IRS, defendants and John Harris shall clearly and conspicuously disclose the percentage or number of submitted offers that were not accepted by the IRS and shall have prior substantiation for making such claims.

36. Defendants and John Harris shall clearly and conspicuously disclose all material terms and conditions of any guarantee they offer consumers.

37. In any advertisement in which defendants or John Harris represent that they offer a "refund," or term or phrase of similar import, defendants and John Harris shall clearly and conspicuously disclose that refunds are based on the amount of work performed and that the refund consideration is not based upon the success, or lack thereof, of defendants' and John Harris' tax resolution services.

38. Defendants and John Harris shall provide consumers with full refunds or refunds on a pro rata basis for their OIC services not performed as of the time of a consumer's refund request. Prior to entering into or accepting payment under any service agreement for the OIC services between defendants or John Harris and consumers, defendants and John Harris shall clearly and conspicuously disclose and explain (a) the anticipated stages of work that will be performed in connection with the OIC services, (b) the amount of the total fee allocated to each service, (c) the refund amounts which can be expected, (d) what portion of the total fee will actually comprise any administrative/processing fees to be retained by defendants or John Harris, (e) that financing fees will not be refunded, and (f) all conditions under which consumers may be required to sign a release, including whether a refund will be conditioned on the signing of a release.

39. Defendants and John Harris shall implement policies and procedures by which all

employees or independent contractors acting on behalf of defendants and John Harris will be trained in, and required to abide by, specific measures to expediently and appropriately address the following areas (at a minimum):

- (a) the intake and timely processing of consumers' paperwork (including any and all forms or correspondence required to process applications for filing taxes, offers in compromise, or other services for which the consumer has contracted);
- (b) the intake and prompt processing of consumers' complaints, cancellations of service contracts, and requests for refunds;
- (c) prior to accepting any payment for services from consumers who request application to the IRS's OIC program, making an initial determination as to whether said applicants actually qualify for those benefits, and if not, putting them on immediate notice to that effect;
- (d) prior to accepting any payment for services from consumers who have been determined to qualify for the IRS' OIC program, the provision of accurate, straightforward information, explaining all criteria that can materially affect an applicant's eligibility for that program;
- (e) prior to entering into or accepting payment under any service agreement for the OIC services between defendants or John Harris and consumers, a clear and conspicuous explanation of the opportunity for a refund in connection with OIC services, including all of the disclosures required pursuant to paragraph 38;
- (f) in any release containing confidentiality or anti-disparagement clauses that consumers are required to sign in connection with the payment of a refund or the



resolution of a dispute over a refund, the incorporation of language that specifically excepts a consumer's prerogative to cooperate with any state or federal government investigation;

(g) establishing communication guidelines that ensure that defendants' and John Harris' clients are regularly provided with copies of all original written correspondence (not including supporting documentation previously provided to the defendants or John Harris by the client) to the IRS or other entities on the consumers' behalf, are promptly notified of any and all additional necessary information that they must furnish to process their applications or keep their offers current, and are provided with the means, along with clear instructions, to obtain information on the status of their case; and

(h) establishing a new compensation plan that, instead of being based 100% on commissions, incentives and/or bonuses, is comprised of a substantial salary component that is paid regardless of the number of sales made.

40. Defendants and John Harris shall deliver a copy of this Consent Judgment to all principals, members, managers, officers, directors, managers, employees, agents, independent contractors, consultants and representatives having direct contact with consumers or having responsibilities with respect to the subject matter of this Consent Judgment and shall secure from each such person a signed and dated statement acknowledging receipt of the Consent Judgment. Defendants and John Harris shall deliver this Consent Judgment to current personnel within thirty (30) days after the date of service of this Consent Judgment, and to new personnel within fifteen (15) days after the person assumes such position or responsibilities.

41. Defendants and John Harris shall conduct undercover interviews of their

consultants and sales representatives on a continuing basis for at least three years following the entry of this Consent Judgment. During each calendar year, defendants and John Harris shall conduct an undercover interview of each of their consultants and sales representatives.

Defendants and John Harris shall record (audio and/or visual) the undercover interviews or reduce the results of said undercover interviews to writing. Defendants and John Harris shall make the results of said undercover interviews available to the States by providing copies of the results to each of the States on a quarterly basis. Defendants shall maintain such recording or writing for a period of one year.

42. The States may, at their discretion and in accordance with applicable state and federal law, conduct undercover interviews of defendants' and John Harris' consultants and sales representatives for the purpose of confirming compliance with this Consent Judgment and state law. The test shoppers are not required to disclose that they are representatives of the State when making contact with defendants and John Harris. Defendants and John Harris agree to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was a test shopping conducted by the State.

43. Defendants and John Harris shall record each written complaint, arbitration demand, and lawsuit received from a consumer located in North Carolina and, upon request by the State, shall provide a current full and accurate list of such complaints to the State that includes: name of complainant; address of complainant; nature of complaint (if any); date of complaint; date of resolution (if any). Defendants and John Harris shall maintain all case management system (CMS) notes entered electronically in connection with oral complaints made by North Carolina consumers. Nothing herein shall preclude, limit, or otherwise alter the right of

the State to request documents, including but not limited to the CMS notes by the service of a Civil Investigative Demand.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

44. Defendants and John Harris shall include in all contracts with consumers the following notice, which shall appear conspicuously in boldface, capitalized font of at least twelve (12) point type:

**"IMPORTANT: IF YOU HAVE RECEIVED OR BEEN SERVED WITH LEGAL PAPERS, OR SUMMONED TO APPEAR IN COURT, YOU SHOULD CONSIDER CONSULTING WITH A PRIVATE ATTORNEY IMMEDIATELY, EVEN IF YOU RETAIN (NAME OF COMPANY) TO RESOLVE YOUR TAX PROBLEMS OR NEGOTIATE YOUR DEBTS. YOUR FAILURE TO RESPOND TO LEGAL PAPERS OR APPEAR IN COURT MAY RESULT IN SERIOUS LEGAL CONSEQUENCES. (NAME OF COMPANY) IS NOT A LAW FIRM. WE CANNOT REPRESENT YOU IN LEGAL PROCEEDINGS OR APPEAR IN COURT, OR RESPOND TO LEGAL PAPERS, ON YOUR BEHALF."**

Prior to entering into a contract with a consumer, defendants' or John Harris' sales representative or consultant shall direct the consumer's attention to the foregoing notice and request the consumer to read such notice. Following the consumer's reading of the notice, defendants' or John Harris' sales representative or consultant shall request the consumer to place his or her initials on a blank line, which shall be in close proximity to such notice.

45. Prior to entering into a contract with a consumer, defendants' or John Harris' sales representative or consultant shall disclose orally to such consumer that a substantial part of his or her income is based on the number of contracts sold to consumers. The written contract shall also contain the following disclosure in close proximity to and in the same type font as the three-day right of cancellation: "A substantial part of our sales consultants' income is based upon the

number of contracts they sell."

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT

46. Defendants shall pay to the States restitution in the sum of \$1,500,000.

Defendants shall pay the sum as follows:

- (a) \$900,000.00 shall be paid prior to the entry of this Consent Judgment; and
- (b) the remaining \$600,000 shall be paid in equal monthly installments of \$70,000 on the first day of each month until the full \$1,500,000 is paid;

47. Defendants shall pay the additional sum of \$300,000 to the States collectively and which shall be divided as determined by the States for additional restitution, attorneys' fees, investigative costs, and consumer protection purposes at the discretion of each State's Attorney General.

48. Defendants shall pay the \$300,000 in equal monthly installments of \$100,000 each month beginning the month after the completion of the payment of \$1,500,000 until the \$300,000 is paid in full.

49. Defendants shall make payments by cashier's check made out to the North Carolina Department of Justice and sent to the attention of Harriet F. Worley, Assistant Attorney General.

50. All unpaid sums shall be immediately due and owing upon the sale of JKHC, or on the sale of the majority of its assets, or on a merger with another entity.

51. John K. Harris personally guarantees the full amount of all payments as indicated on the guarantee agreement which is attached to this Consent Judgment as Exhibit A

and is incorporated by reference. In the event of a default, the State of North Carolina by and through its Attorney General and on behalf of the other States, as that term is defined in this agreement, may file an action to collect from John K. Harris on anything which remains unpaid.

52. Upon making each of the payments specified in Paragraphs 46 through 48, defendants and John K. Harris shall be fully divested of any interest in, or ownership of, any monies paid and any interest on the monies, and the monies and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the States, or the consumers who will receive refunds, pursuant to the terms of this Consent Judgment.

53. In the event of a default of any payment obligation imposed by this Consent Judgment, and in addition to any other relief or remedy elected or pursued by the States, all payments set forth in Paragraphs 46 through 48 shall be accelerated and shall become, as of the date of default, due and owing in their entirety.

54. Defendants and John Harris have represented and warranted that they have reviewed their financial situation and that:

(a) This Consent Judgment and any releases given in connection herewith shall not release or extinguish a nondischargeability claim under 11 U.S.C. § 523(a) based upon the conduct that formed the basis for North Carolina's underlying claims herein, and North Carolina reserves the right to file a nondischargeability complaint (if required) in the event a bankruptcy is filed prior to payment of the full Settlement Amount. Further, defendants agree that nothing in this Consent Judgment and /or in any release shall be construed to constitute an

accord and satisfaction or a novation of North Carolina's claims for fraud, illegality, and deceptive practices or the like to that of a contract claim. In the event of an intervening bankruptcy, each and every underlying claim upon which this Consent Judgment is based may form the basis for a subsequent nondischargeability claim and North Carolina is free to show in the bankruptcy court that the underlying claims herein had their genesis in or originated from fraud; and

(b) The parties and John Harris agree that this Consent Judgment will be admissible in any bankruptcy matter.

55. North Carolina consumers who entered into contracts with defendants prior to the entry of this Consent Judgment are eligible for a pro rata refund from the restitution pool to the extent they have not already received a refund directly from defendants if they either (a) filed a complaint against defendants with the Consumer Protection Division of the North Carolina Attorney General's Office, the Better Business Bureau, the South Carolina Department of Consumer Affairs, or any similar organization prior to the entry of this Consent Judgment; or (b) within ninety days of the entry of this Consent Judgment file a complaint against defendants with the Consumer Protection Division of the North Carolina Attorney General's Office, the Better Business Bureau, the South Carolina Department of Consumer Affairs, or any similar organization.

56. Defendants and John Harris shall cancel the contracts and any amounts allegedly due and owing by JKHC and FRS consumers who have requested refunds or have made written complaints to JKHC and FRS. JKHC and FRS shall not negatively report such cancellation to a

credit reporting agency and will send a letter to the credit reporting agencies with a copy to the individual consumer and the State requesting that the consumer's obligation to JKHC and/or FRS be marked satisfied in full and any prior negative reports be deleted by the credit reporting agencies.

57. Any release entered into by any consumer with JKHC in no way limits the amount of restitution the State of North Carolina can pay to such consumer. Except as provided in this paragraph, the remaining terms and provisions of any such release shall remain valid and binding on the consumer signing such release and on JKHC and shall be unaltered by this Consent Judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

58. Defendants and John Harris shall undertake to respond to all consumer complaints in good faith and in a reasonable, timely manner.

59. Nothing in this Consent Judgment shall be construed as relieving the defendants or John K. Harris of their obligations to comply with all state and federal laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

60. The defendants and John Harris have provided the States with certain documents, advertisements, and contracts. The defendants and John Harris acknowledge and agree that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Order, or a release of any issues relating to such documents.

61. This Consent Judgment shall not bind any other agencies, boards, commissions or

offices of the State of North Carolina.

62. This Consent Judgment shall not limit the rights of any private party to pursue any remedies allowed by law.

63. If any portion of this Consent Judgment is held invalid by operation of law, the remaining terms of this Consent Judgment shall not be affected and shall remain in full force and effect.

64. The State agrees to act in good faith and with due regard to fairness when considering whether to initiate court proceedings for a violation of this Consent Judgment against the defendants or John Harris. It is not the State of North Carolina's intention to initiate contempt proceedings regarding violations of this Consent Judgment for a single, isolated, and unintentional mistake. Except as otherwise agreed, the State does not intend to hold defendants' members, managers, agents, servants, and employees financially responsible for any monetary relief, penalties, or restitution related to conduct that occurred prior to entry of this Consent Judgment except to the extent John Harris is personally bound by the Permanent Injunction and through a personal guarantee for the full amount of all payments set out in paragraphs 46 through 48 and 51.

65. Any notices required to be sent to the plaintiffs or to the defendants by this Consent Judgment shall be sent by United States mail or certified mail return receipt requested. The documents shall be sent to the following addresses:

For the State:

North Carolina Department of Justice  
Consumer Protection Division  
Att: Harriet F. Worley



Assistant Attorney General  
P.O. Box 629  
Raleigh, North Carolina 27602

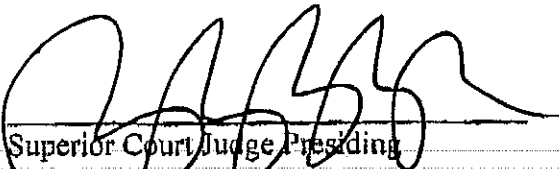
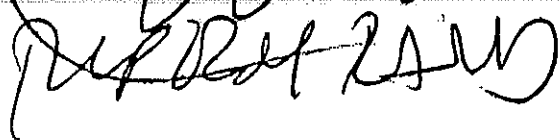
For the Defendants:

Director of Legal Affairs  
JK Harris & Company, L.L.C.  
4995 Lacross Road, Suite 1800  
North Charleston, SC 29406

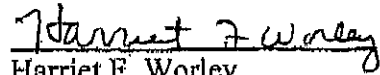
For John Harris:


John K. Harris  
JK Harris & Company, L.L.C.  
4995 Lacross Road, Suite 1800  
North Charleston, SC 29406

This the 11<sup>th</sup> day of June, 2008

  
Superior Court Judge Presiding  


WE CONSENT:  
STATE OF NORTH CAROLINA  
ex rel ROY COOPER  
Attorney General

  
Harriet F. Worley  
Assistant Attorney General

  
John K. Harris, Individually

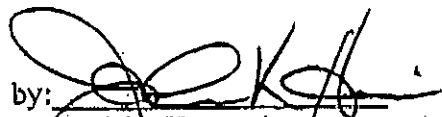
JK Harris & Company, L.L.C.

by:   
John K. Harris  
Member/Manager

Professional Fee Financing Associates, L.L.C.

by:   
John K. Harris  
Member/Manager

JK Harris Financial Recovery Systems, L.L.C.

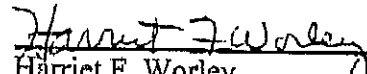
by:   
John K. Harris  
Member/Manager

**CERTIFICATE OF SERVICE**

I, hereby certify that on this date I served the foregoing COMPLAINT AND CONSENT JUDGMENT upon the defendants by depositing a copy of the same in the U.S. Mail, first class postage prepaid, and addressed to:

Greg Horton  
5 Exchange Street  
P.O. Box 999  
Charleston, South Carolina 29402-0999

This the 11 th day of June, 2008.

  
Harriet F. Worley  
Assistant Attorney General  
Consumer Protection Division  
N.C. Department of Justice

## PERSONAL GUARANTY

This Guaranty Agreement ("Guaranty") is entered into by:

Guarantor: John K. Harris ("Guarantor"), and

Creditor: The State of North Carolina on behalf of the States of Arkansas, Arizona, California, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Vermont, and West Virginia ("Creditor" and "States").

Amount Guaranteed: Nine Hundred Thousand Dollars (\$900,000) ("Guaranteed Obligations").

### 1. Guaranty

For valuable consideration, the receipt of which is hereby acknowledged, the Guarantor personally, unconditionally and irrevocably guarantees the full and prompt payment in lawful money of the United States to the Creditor, whether at stated maturity, by acceleration, demand or otherwise of restitution in the amount of \$600,000, and attorneys' fees, investigative costs, and consumer protection expenditures in the amount of \$300,000, or any unpaid balance thereunder, now or hereafter owed by J.K. Harris & Company, LLC, JK Harris Financial Recovery System, LLC, and Professional Fee Financing Associates, L.L.C. ("Debtor") to the Creditor under or pursuant to the Consent Judgment (a copy of which is attached hereto as Exhibit "A") entered by the Creditor against the Debtor in Wake County Superior Court court on June 11, 2007 (hereinafter "the CJ"). The total amount of indebtedness guaranteed hereunder by Guarantor is \$900,000.

This is a guaranty of payment only and not of collection. Guarantors' obligations under this Guaranty are independent of those of Debtor. Creditor may bring a separate action against Guarantor without proceeding against Debtor and without pursuing any other remedy. Guarantor waives any right to require Creditor to proceed against Debtor, or pursue any other remedy in Creditor's power whatsoever.

### 2. Waiver of Defenses and Claims

Guarantor waives and agrees not to assert or take advantage of:

- a. any defense based upon any disability or other defense of Debtor, or any limitation or discharge from any cause whatsoever of the liability of Debtor, or any defense based upon any restraint or stay applicable to actions against Debtor, whether such disability, discharge, limitation, restraint or stay is consensual, or arising by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, insolvency, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding, or from any other cause, including any defense to the payment of interest, attorneys' fees and costs, and

other charges that otherwise would accrue or become payable in respect to the Guaranteed Obligations after the commencement of any such proceeding;

- b. setoff, counterclaim, presentment, demands for performance, notices of non-performance, protest, notice of protest, notice of nonpayment, notice of dishonor of this Guaranty or other notice of any kind and all surety and Guarantor defenses;
- c. any defense based upon a statute of limitations and any defense based upon Creditor's delay in enforcing this Guaranty, the CJ or any other agreement. Any payment by Debtor or other circumstance which operates to toll any statute of limitations as to Debtor shall operate to toll the statute of limitations as to Guarantor;
- d. any defense based upon the modification, renewal, compromise, settlement, extension, substitution or other alteration of any of the Guaranteed Obligations or the CJ, or of the documents executed in connection therewith. Guarantor authorizes Creditor, without notice or demand and without affecting Guarantor's liability hereunder, from time to time to renew, compromise, extend, accelerate or otherwise change the time for Debtor's payments under the CJ. No right or power of Creditor hereunder shall be deemed to have been waived by any act or conduct on the part of Creditor, or by any neglect to exercise such right or power, or by any delay in so doing; and every right or power shall continue in full force and effect until specifically waived or released by an instrument in writing executed by Creditor;
- e. any defense based upon or arising out of any defense which Debtor or any other guarantor or other person may have to the performance of any part of the Guaranteed Obligations.

### 3. Rights of Creditor

Guarantor authorizes Creditor at any time in Creditor's sole discretion to take any of the following actions on such terms and conditions as Creditor may elect, without giving notice to Guarantor or obtaining the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty:

- a. alter any of the terms and/or documentation of any of the Guaranteed Obligations or the CJ, including renewing, amending, releasing, waiving, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the Guaranteed Obligations;
- b. accept new or additional documents, instruments or agreements relative to the

Guarantied Obligations or the COJ;

- c. accept partial payments on the Guarantied Obligations or the CJ;
- d. take and hold any security or additional guaranties for the Guarantied Obligations or the CJ and amend, alter, exchange, substitute, transfer, enforce, perfect or fail to perfect, waive, subordinate, terminate, compromise, or release any such security or guaranties;
- e. settle, release on terms satisfactory to Creditor or by operation of law or otherwise, compound, compromise, collect or otherwise liquidate the Guarantied Obligations and/or the security or any guaranty therefor in any manner;
- f. release Debtor or any other person of its liability for all or any of the Guarantied Obligations or the CJ;
- g. participate in any settlement offered by Debtor, any guarantor or any other person, whether in liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other debtor-relief proceeding or otherwise;
- h. exercise or not exercise rights available to it in any liquidation, reorganization, receivership, bankruptcy, assignment for benefit of creditors or other debtor-relief proceeding, including voting or not voting to accept a plan and filing or not filing a proof of claim;
- i. release, substitute or add any one or more guarantors or endorsers; and
- j. assign its rights under this Guaranty in whole or in part.

4. **Default**

In the event of default of Debtor to make payment to Creditor under the CJ, when due, Guarantor agrees, without the Creditor first having to proceed against the Debtor, to pay on demand all sums due and to become due to the Creditor from Debtor and all losses, costs, attorney's fees, or expenses which the Creditor may incur in enforcing this guaranty or in any action or proceeding arising out of, or relating to this guaranty, by reason of Debtors' default.

Each of the following shall constitute a default of Guarantor under this Guaranty, entitling Creditor, at its option and in addition to its other remedies, to collect immediately from Guarantor the full amount of the Guarantied Obligations notwithstanding any otherwise applicable due date with respect thereto:

- a. the occurrence of any breach of, default or event of default under or failure to

comply with, perform or pay when due, whether on demand or otherwise, any term, provision, covenant, representation or warranty or condition under the COJ by Debtor or Guarantor;

- b. the failure of Guarantor to perform any of his obligations under this Guaranty;
- c. the failure of Guarantor to comply with any of the other terms or provisions of this Guaranty;
- d. the revocation or purported revocation by Guarantor of this Guaranty; or
- e. the death of Guarantor.

#### 5. Bankruptcy

The obligations of Guarantor under this Guaranty shall not be altered, limited, stayed or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Debtor, or by any defense Debtor may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. Any stay of enforcement or of acceleration of the time for payment of any of the Guaranteed Obligations as against Debtor or any other person shall have no effect upon Guarantors' liability under this Guaranty or the time for payment by Guarantors hereunder.

Guarantor waives any defense based upon any action taken or omitted by Creditor in any bankruptcy or other insolvency proceeding involving Debtor or any other person, including any election to have Creditor's claim allowed as secured, partially secured or unsecured.

The liability of Guarantor hereunder shall continue in effect notwithstanding any payment or performance of the Guaranteed Obligations by Debtor or any other person, such that, if any such payment or performance is avoided or recovered from Creditor or Creditor is otherwise required to restore or return any such payment or performance in connection with the bankruptcy, insolvency or reorganization of Debtor or otherwise, Guarantor shall remain liable hereunder as though such payment or performance had not occurred.

#### 6. Subordination

All existing and future obligations of Debtor to Guarantor (including, without limitation, any obligations arising by reason of any payment or performance by Guarantor hereunder) are hereby subordinated to the full and indefeasible payment and performance of the Guaranteed Obligations to Creditor.

Upon any default under any of the Guaranteed Obligations or hereunder, all obligations of

Debtor to Guarantor shall be collected, enforced and received by Guarantor as trustee for Creditor, and all amounts received shall be paid over to Creditor, for application to the Guaranteed Obligations.

7. **Governing Law and Venue**

This Guaranty shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without regard to conflict of law provisions. Venue for any action or proceeding brought under this Guaranty will be at Creditors' option, in Wake County Superior Court in the State of North Carolina. The Attorney General of the State of North Carolina may enforce this guaranty and may commence an action or proceeding on behalf of the Creditor. Guarantor waives any defense or objection based on lack of personal jurisdiction in any such action or proceeding. Guarantor hereby accepts for himself, generally and unconditionally, the non-exclusive jurisdiction of the foregoing court. Guarantor irrevocably consents to the service of process in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at his respective address for notices pursuant to this Guaranty. Nothing contained herein shall affect the right of Creditor to serve process in any other manner permitted by law. Guarantor waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

8. **Binding Effect**

This guarantee is binding upon Guarantor and his respective heirs, executors, administrators, successors and assigns, and inures to the benefit of and is enforceable by Creditor and their successors, transferees and assigns.

9. **Miscellaneous Provisions**

This Guaranty constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings. No provision of this Guaranty or Creditors' rights hereunder can be waived or modified nor can Guarantors be released from their obligations hereunder except by a writing executed by Creditor.

This Guaranty may be signed in counterparts, which together shall constitute the agreement of the parties when each party has signed a counterpart.

10. **GUARANTOR'S ADDRESS FOR NOTICE:**

John Harris  
1036 Wharf Indigo Place  
Mt. Pleasant South Carolina 29464



**CREDITORS' ADDRESS FOR NOTICE**

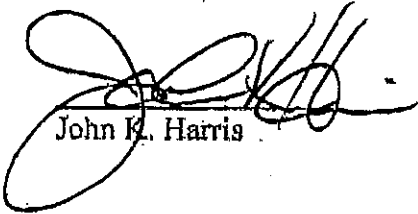
North Carolina Department of Justice  
Consumer Protection Division  
Att: Harriet F. Worley  
Assistant Attorney General  
P.O. Box 629  
Raleigh, North Carolina 27602

**11. Severability.**

The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect the validity or enforceability of any other provision.

Dated: June 10, 2007

**GUARANTOR:**

  
John R. Harris